

**TCCI Holding Corp. (formerly d/b/a The Crosset Co., Inc.) and Bakery, Cracker, Pie & Yeast Drivers and Chauffeurs, Local Union No. 114, an affiliate of the International Brotherhood of Teamsters, AFL-CIO. Case 9-CA-31112**

May 12, 1995

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

Upon a charge filed by the Union on September 14, 1993, the General Counsel of the National Labor Relations Board issued a complaint on November 29, 1993, against TCCI Holding Corp. (formerly d/b/a The Crosset Co., Inc.), the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act by failing to furnish information requested by the Union about the transfer of the Respondent's assets to various banks. On April 28, 1994, the Respondent filed an untimely answer, which admitted in part and denied in part the allegations in the original complaint.

On August 4, 1994, the General Counsel issued an amended complaint containing new allegations that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing to bargain with the Union about the effects of a cessation of operations and by refusing and failing to process a grievance filed by the Union. The Respondent has not filed an answer to these new allegations in the amended complaint.

On February 10, 1995, the Acting Regional Director for Region 9 issued an order approving the withdrawal of allegations in the amended complaint relating to the Union's requests for information. On February 16, 1995, the General Counsel filed a Motion for Summary Judgment with the Board on the remainder of the amended complaint. On February 21, 1995, the Board issued a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Section 102.20 of the National Labor Relations Board's Rules and Regulations states:

*Answer to the complaint; time for filing; contents; allegations not denied deemed admitted.*—The respondent shall, within 14 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement

operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

As previously stated, the amended complaint repeated unfair labor practice allegations in the original complaint that are no longer at issue. The amended complaint also included new allegations that the Respondent violated Section 8(a)(5) of the Act by failing to bargain about the effects of the cessation of the Respondent's operations and by failing to process the Union's grievance about the cessation of operations. Although properly served with a copy of the amended complaint,<sup>1</sup> the Respondent has failed to file an answer to the new allegations. The General Counsel seeks summary judgment only regarding those unanswered allegations. In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

From about 1958 to June 13, 1993, when it ceased operations, the Respondent was a corporation engaged in the wholesale distribution of produce from its Cincinnati, Ohio facility. During the 12-month period ending on June 13, 1993, the Respondent, in conducting its operations, sold and shipped goods valued in excess of \$50,000 from its Cincinnati, Ohio facility directly to points outside the State of Ohio. We find that the Respondent has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

From about 1958 until the Respondent ceased operations on June 13, 1993, the Union has been the designated exclusive collective-bargaining representative, within the meaning of Section 9(a) of the Act, of employees in the following unit, which is appropriate for

<sup>1</sup> According to the undisputed allegations and exhibits in the General Counsel's memorandum in support of the Motion for Summary Judgment, the General Counsel obtained the name of Donald L. Wiley as the Respondent's agent for service of process from the Ohio Secretary of State. On January 10, 1995, the General Counsel served a copy of the amended complaint on Wiley by certified mail. On January 26, 1995, the General Counsel personally served another copy of the amended complaint on Wiley by leaving it at his law offices.

bargaining within the meaning of Section 9(b) of the Act:

All truck drivers, helpers, loaders, packers, unloaders and processing employees employed by the Respondent at its Cincinnati, Ohio, facility, but excluding all office clerical employees and all professional employees, guards and supervisors as defined in the Act.

The Respondent's recognition of the Union as the exclusive bargaining representative of the unit employees has been embodied in a series of collective-bargaining agreements between the Respondent and the Union. The most recent of these agreements was effective from September 30, 1989, to October 2, 1993.

About June 13, 1993, the Respondent ceased operations and transferred its assets to creditor financial institutions. The effects of this conduct involved wages, hours, and other terms and conditions of employment in the bargaining unit represented by the Union. These effects are mandatory subjects for the purposes of collective bargaining. The Respondent ceased operations and transferred its assets without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent about the effects of this conduct. We find that the Respondent has thereby violated Section 8(a)(5) and (1) of the Act.

On June 16, 1993, the Union filed a grievance under the grievance-arbitration procedure outlined in the collective-bargaining agreement that was then in effect. The grievance concerned the Respondent's cessation of operations and transfer of assets. Since June 16 the Respondent has failed and refused to process the Union's grievance. We find that the Respondent has thereby violated Section 8(a)(5) and (1) of the Act.

#### CONCLUSIONS OF LAW

By failing to provide the Union with notice and opportunity to bargain about the effects of the Respondent's cessation of operations and transfer of assets to creditors, and by failing and refusing to process the Union's June 16, 1993 grievance concerning this action, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent ceased operations and transferred its assets to creditors without notice to the Union and without affording the Union an opportunity to bargain about the effects of this action, we shall provide for a limited backpay remedy as set

forth in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968). Accordingly, the Respondent shall pay employees affected by the Respondent's cessation of operations backpay, at the rate of their normal wages when last in the Respondent's employ, from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the cessation of operations at its Cincinnati, Ohio facility, and the transfer of assets to creditors; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of these employees exceed the amount he or she would have earned as wages from June 13, 1993, the date the Respondent ceased operations, to the time he or she secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than what these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Interest on backpay owed by the Respondent shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

We shall also require the Respondent, on request of the Union, to process the Union's grievance of June 16, 1993, relating to the cessation of operations and the transfer of assets to creditors. Finally, because the Respondent has ceased its operations, we shall require it to mail copies of the notice to all unit employees employed when operations ceased.

#### ORDER

The National Labor Relations Board orders that the Respondent, TCCI Holding Corp. (formerly d/b/a The Crosset Co., Inc.), Cincinnati, Ohio, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to bargain collectively with the Union, Bakery, Cracker, Pie & Yeast Drivers and Chauffeurs, Local Union No. 114, an affiliate of the International Brotherhood of Teamsters, AFL-CIO, as the exclusive collective-bargaining representative of employees in the appropriate bargaining unit described below, by failing to notify and give the Union an opportunity to bargain about the effects of ceasing operations at the Respondent's Cincinnati, Ohio facility and transferring assets to creditors, and by failing and refusing to process a grievance filed by the Union about the cessation of operations and transfer of assets. The appropriate bargaining unit is,

All truck drivers, helpers, loaders, packers, unloaders and processing employees employed by the Respondent at its Cincinnati, Ohio, facility, but excluding all office clerical employees and all professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively with the Union about the effects of ceasing operations at the Respondent's Cincinnati, Ohio facility, and the transfer of assets to creditors, and reduce to writing any agreement reached as a result of such bargaining.

(b) Pay employees affected by the cessation of operations their normal wages for the period set forth in the remedy section of this Decision and Order.

(c) On request, process the grievance filed by the Union on June 16, 1993, concerning the Respondent's cessation of operations and the transfer of assets.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Mail a copy of the attached notice marked "Appendix"<sup>2</sup> to each of its employees who was employed at its Cincinnati, Ohio facility when operations ceased on June 13, 1993. Copies of that notice, on forms provided by the Regional Director for Region 9, shall, after being signed by the Respondent, be mailed immediately upon receipt.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively with the Union, Bakery, Cracker, Pie & Yeast Drivers and Chauffeurs, Local Union No. 114, an affiliate of the International Brotherhood of Teamsters, AFL-CIO, as the exclusive collective-bargaining representative of employees in the appropriate bargaining unit described below, by failing to notify and give the Union an opportunity to bargain about the effects of ceasing operations at our Cincinnati, Ohio facility and transferring our assets to creditors, and by failing and refusing to process a grievance filed by the Union about these actions. The appropriate bargaining unit is,

All truck drivers, helpers, loaders, packers, unloaders and processing employees employed by the Respondent at its Cincinnati, Ohio, facility, but excluding all office clerical employees and all professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively with the Union about the effects of ceasing operations at our Cincinnati, Ohio facility, and the transfer of assets to creditors, and WE WILL reduce to writing any agreement reached as a result of such bargaining.

WE WILL pay employees affected by our cessation of operations their normal wages for the period required by the Board in the remedy section of its Decision and Order.

WE WILL, on request, process the grievance filed by the Union on June 16, 1993, concerning our cessation of operations at the Cincinnati, Ohio, and the transfer of assets to creditors.

TCCI HOLDING CORP. (FORMERLY  
D/B/A THE CROSSET CO., INC.)